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+ W.P.No.16316 of 2006

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$ The District Collector, Karimnagar District, and another

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[1] 2003 (2) Andhra Weekly Reporter, 425,

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.16316 of 2006

Date:28-08-2006

BETWEEN:

Koleti Maruthi ... Petitioner

And

The District Collector, Karimnagar District, and another.

... Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.16316 of 2006

ORDER:

1. This court ordered notice before admission on 07-08-2006. Sri Bhaskar Reddy entered appearance on behalf of Respondent No.2. The learned Assistant Government Pleader for Panchayat Raj represents Respondent No.1.

2. Sri Sridhar Rao, learned counsel for the writ petitioner had drawn the attention of this court to the language employed in Section 22 read with Section 184 (2) of the A.P. Panchayat Raj Act,1994 (hereinafter in short referred to as 'the Act' for the purpose of convenience) and would maintain that the impugned order dated 22.7.2006 made by the first respondent is not in accordance with law and hence let there be a direction to the first respondent to consider the representation of the petitioner in accordance with law.

3. The learned Assistant Government Pleader for Panchayat Raj would contend that even in the light of the language of Section 22 read with Section 184 (2) of the Act, the District Collector as such has no role to play and the procedure as contemplated by the said provisions may have to be followed.

4. Sri Bhakar Reddy, the learned counsel representing the second respondent would comment that when the first respondent-District Collector has no role to play certain observations made in relation to

Xerox copies or otherwise need not be seriously considered. However, the counsel would contend that since the disqualification of the second respondent as ZPTC member, Kamanpur Mandal is concerned the petitioner may have to follow the proper procedure as contemplated by Section 22 read with Section 184 (2) of the Act. The counsel also placed strong reliance on the decision of this court in **Punna Prameela Vs. Reddimalla Yadagiri and others** [1].

5. The writ petition is filed for a writ of Mandamus declaring the letter No.D2/1463/2006 dated 22.7.2006 of the first respondent as arbitrary, illegal, contrary to law, without application of mind and not in accordance with Section 22 R/W. Section 184(2) of the Act, and consequently direct the first respondent to initiate steps to reconsider the representation dated 12.7.2006 of the petitioner in accordance with Section 22 R/W. Section 184(2) of the Act and pass such other suitable orders.

6. It is stated by the writ petitioner that he had contested for ZPTC Kamanpur constituency, Karimnagar District during the elections held in the month of June,2006 and the second respondent declared as elected as Member of ZPTC, Kamanpur constituency. It is also stated that the second respondent is registered contractor with Panchayat Raj Department, RWS, PWD and R & B, at the time of filing nominations he had concealed the factum of his profession as contractor and being continued as contractor with the department the second respondent has several incomplete contract works existing even to this day. It is also stated that the second respondent was awarded contract work vide proceedings No.HD/SHAPE/2003-04 dated 10-03-2004 to execute the work at PWS scheme at Naarasimhapuri Colony Head Office, Penchikalpet, MP Kamanpur, further in proceedings No.HD/SHAPE/2003-04 dated 10.3.2004 to execute the work of PWS scheme at Maruthinagar Village, Head Office Kalvacherla, MP Kamanpur. It is also stated that as per the terms and conditions of the work awarded to him by the said proceedings he has to complete the

work within six months but till this day the works are incomplete and he is being continued as existing contractor, the same can be evidenced from the certificate dated 7.7.2006 issued by the Executive Engineer , RWS, Manthani, and also it can be evidenced vide letter No. AE/K.pur/SHAPE/06, dated 29.07.2006 and letter No. AB/DB/SHAPE/2006 dated 25-7-2006 issued by Deputy Executive Engineer, RWS Sub Division, Manthani, Karimnagar District. It is also stated that as per Section 19(2) (d) of the Act, second respondent incurred disqualification as on the date of nomination and further he is disqualified to hold the office of ZPTC Member. It is stated that the petitioner made representation on 12-7-2006 to the first respondent since he being the authority under Section 22 of the Act to decide the question of disqualification of members . It is also stated that the first respondent without proper application of mind on the legal opinion given by the Government Pleader, had made the impugned order and hence in such circumstances, it is prayed that the first respondent be directed to reconsider the representation made by the petitioner in this regard.

7. In **Punna Prameela Vs. Reddimalla Yadagiri and others (supra),** the learned Judge of this court observed that this exercise would have become necessary if only the District Collector is vested with the power to declare that any member of a Gram Panchayat had ceased to hold the office or to declare that such member has incurred disqualification. Under the scheme of Section 22 of the Act, the District Collector does not figure anywhere.

8. Submissions at length were made by the counsel on record in relation to the scope and ambit of Section 22 read with Section 184 (2) of the Act. Section 22 of the Act dealing with authority to decide questions of disqualification of members reads as hereunder:

> "(1) Where an allegation is made that any person who is elected as a member of a gram panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the

executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether, or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the gram panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the District Court having jurisdiction over the area in which office of the gram panchayat is situated for decision.

(2) Pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.
(3)Where a person ceases to be the Sarpanch or Upa Sarpanch of a gram Panchayat as a consequence of his ceasing to be a number of the gram panchayat under clause (b) of Section 20 and is restored later to his membership of the gram panchayat under sub-section (2) of Section 21, he shall, with effect from the date of such restoration, be deemed to have been restored also to the office of Sarpanch or Upa-Sarpanch, as the case may be."

9. Likewise, Section 184 of the Act deals with disqualifications. Section 184 (2) of the Act specifies as hereunder.

"The provisions of (Sections 18,19,19A, 19B, 20,21 and 22) shall apply to a member of the Zilla Parishad as they apply to a member of the gram panchayat subject to the variations that the expressions, "gram panchayat", "executive authority", "Sarpanch", "Upa Sapanch" and "District Panchayat Officer", the expressions "Zilla Parishad", "Chief (Executive Authority), "Chairperson", "Vice-Chairperson" and "Chief (Executive Authority) shall respectively be substituted.

Provided that nothing in clause (b) of Section 20 shall apply to a member of the Zilla Parishad specified in clauses (ii) to (iv) of sub-section (3) of Section 177."

10. It is not doubt true that in the order impugned made by the first respondent dated 22-07-2006 the first respondent referred to the opinion of the Government Pleader and also the aspect of production of some Xerox copies of documents. This aspect need not detain this court any longer for the reason that in the light of the language in Section 22 read with Section 184 (2) of the Act aforesaid, the first

respondent has no role to play. It is needless to say that when the procedure is specified by Section 22 read with Section 184 (2) of the Act, the same may have to be followed. In the light of the same, liberty is given to the petitioner to follow the procedure as specified by Section 22 read with Section 184 (2) of the Act.

11. Accordingly, the writ petition is disposed of. No order as to costs.

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28-08-2006

Note:
L.R. copy to be marked.

C.C. in three days
B/o.
Stp

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[1] **2003 (2) Andhra Weekly Reporter 425**